STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	)	
On its Own Motion	)	
	)	Docket No. 01-0662
Investigation concerning Illinois Bell	)	
Telephone Company's compliance	)	
With Section 271 of the	)	
Telecommunications Act of 1996	)	Phase 2

BRIEF OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom"), on behalf of itself and its Illinois operating subsidiaries, by and through its attorney, pursuant to Section 200.800 of the rules of the Illinois Commerce Commission ("Commission"), hereby tenders its brief in Phase 2 of the above-captioned proceeding.

I. SUMMARY OF POSITION

The record compiled during Phase 2 of this proceeding demonstrates that SBC Illinois' performance reporting is incontrovertibly deficient. Both BearingPoint and Ernst & Young concluded as much. Indeed, without dependable performance reporting, there is no basis to conclude that SBC provides nondiscriminatory access to its Operations Support Systems ("OSS") today, much less that there is sufficient assurance that SBC Illinois will provide nondiscriminatory access to OSS in the future.

In fact, SBC *does not* provide nondiscriminatory access to its OSS today. In its commercial operations, WorldCom continues to experiences a number of important OSS problems, including: (1) SBC's failure to render accurate and reliable wholesale bills; (2) continuing problems with Line Loss Notifications ("LLNs"); (3) outages in SBC's pre-order systems; (4) SBC's transmission of incorrect completion notices; (5) unjustified cancellation of

WorldCom orders; (6) problems processing orders for new lines due to "working service conflicts"; (7) SBC errors in provisioning features as requested by WorldCom; (8) SBC's failure to process WorldCom's deactivate orders; and (9) general OSS defects. While some of these problems may not seem critical individually, collectively they substantially hinder WorldCom's ability to compete in the local market in Illinois. Indeed, SBC Illinois has acknowledged its continuing problems with wholesale billing and line loss notices, but promises that it is working on those problems and things will get better. However, as the Federal Communications Commission ("FCC") has held, paper promises of future performance, have no probative value as to present compliance with section 271.

For these reasons, SBC Illinois has failed to demonstrate that it provides nondiscriminatory access to its OSS and therefore it cannot be found to have complied with nondiscriminatory access requirement to Unbundled Network Elements ("UNEs") that is reflected in checklist item number 2. WorldCom urges the Commission to withhold any positive recommendation on SBC Illinois' section 271 application unless and until (1) SBC fully and conclusively resolves the OSS problems that WorldCom has identified, and (2) proves through BearingPoint's third party test of its OSS that its performance measures are reported accurately, that controls over the development and calculation of those measures are adequate, and that the data it provides is reliable.

Moreover, SBC Illinois' has proposed a watered-down remedy plan that fails by any reasonable measure to provide a self-effectuating performance assurance plan that will ensure SBC continues to comply with the checklist and provide a minimally acceptable level of wholesale service once it is granted section 271 authority in Illinois. After a lengthy proceeding in which SBC, Competitive Local Exchange Carriers ("CLECs"), and Commission Staff had a full and fair opportunity to make their case, the Illinois Commission adopted what it believes is an appropriate remedy plan in Docket 01-0120. SBC has offered nothing in Phase 2 of this proceeding which would warrant the Commission adopting a different remedy plan here. WorldCom therefore urges the Commission to require as a precondition to a positive section 271 recommendation that SBC continue to make the Docket 01-0120 plan available and drop all appeals of that plan. In addition, WorldCom concurs with Staff's recommendation that the 01-0120 plan should be made a part of SBC Illinois Alternative Regulation Plan.

Finally, as discussed in greater detail below, WorldCom urges the Commission to resolve two disputes concerning performance measures that WorldCom, AT&T and SBC could not reach agreement on in the latest six month review of SBC Illinois performance assurance plan.

In sum, SBC must demonstrate compliance with the Telecommunications Act of 1996 ("TA96") <u>before</u>, not after it receives section 271 authorization. SBC must show that it provides nondiscriminatory access to OSS at the time it applies for section 271 authorization based on dependable and accurate performance measures, and demonstrate that it will abide by a Commission-ordered performance assurance plan that will prevent SBC from "backsliding" on its TA96 obligations in the future. It has not done so. As a result, the Commission does not have a record upon which it can recommend to the FCC that SBC Illinois be granted authority to provide in-state, interLATA service in Illinois at this time. In evaluating the record in Phase 2, WorldCom respectfully urges the Commission heed FCC's holding that a Bell Operating Company's ("BOC's") promises of future performance have no probative value as to present compliance with section 271 and that "paper promises" cannot satisfy the BOC's burden of proof (except that prospective assurances are required to demonstrate compliance with section 272). The BOC decides when to file, and it must be in full compliance at that time.[1]

II. DISCUSSION AND ARGUMENT

A. SBC's Wholesale Billing Is Inaccurate and Unreliable.

SBC Illinois must prove that it has "fully implemented the competitive checklist" contained in section 271(c)(2)(B).[2] Section 271 states that, among fourteen other checklist items, "access or interconnection provided or generally offered by a Bell operating company to another telecommunications carrier [must] include[] . . . [n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."[3] This is checklist item 2.

With respect to wholesale billing, the FCC has found that "[u]nder checklist item 2, a BOC must demonstrate that it provides non-discriminatory access to . . . billing."[4] The FCC's Pennsylvania Order states that "[i]n previous section 271 decisions, the Commission has held that, pursuant to checklist item 2, BOCs must provide competitive LECs with . . . complete,

---

[1] *See* Mich. Order ¶¶ 55-59; SC Order ¶ 38; NY Order ¶ 37; TX Order ¶ 38.

[2] *In the Matter of Application of Verizon New England Inc., Bell Atlantic Communications Inc. (D/B/A Verizon Long Distance), NYNEX Long Distance Company (D/B/A Verizon Enterprise Solutions), and Verizon Global networks Inc. for Authorization to Provide In-Region InterLATA Services in Massachusetts,* 16 F.C.C. Rcd. 8988, ¶ 11 (2001) ("*Massachusetts Order*").

[3] 47 U.S.C. § 271(c)(2)(B).

[4] *In the Matter of Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania,* (CC Docket No. 01-138), ¶ 12 ("*Pennsylvania Order*"). *See also Bell Atlantic New York Order*, 15 FCC Rcd at 3989, ¶ 82.

accurate and timely wholesale bills,"[5] and that "the BOC must demonstrate that it can produce a readable, auditable and accurate wholesale bill in order to satisfy its nondiscrimination requirements under checklist item 2."[6]

Based on what the FCC has said, it is critical that SBC Illinois prove and that the Commission find that SBC Illinois' wholesale bills are readable, auditable and accurate before the Commission can find that SBC has met its OSS (checklist item 2) obligations. The FCC recognized in the Pennsylvania Order the critical role that wholesale bills play in local competition, identifying four ways in which "[i]naccurate or untimely wholesale bills can impede a competitive LEC's ability to compete.":[7]

> First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the changes are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition. Fourth, competitive LECs may lose revenue because they generally cannot, as a practical matter, back-bill end users in response to an untimely wholesale bill from and incumbent LEC. Accurate and timely wholesale bills in both retail and BOS BDT [electronic] formats thus represent a crucial component of OSS.[8]

The Commission must view SBC Illinois' wholesale bills against the backdrop of the FCC's pronouncements about the importance of wholesale billing.

---

[5] *Pennsylvania Order* at ¶ 13.

[6] *Id.* at ¶ 22.

[7] *Id.* at ¶ 23 (citations omitted). *See also id.* at ¶ 13 ("Wholesale bills are essential [to competitors] because competitive LECs must monitor the costs they incur in providing services to their customers.").

[8] *Id.* at ¶ 23 (citations omitted). "BOS-BDT" refers to the "Billing Output Specification ("BOS") Bill Data Type ("BDT") electronic billing format.

It is abundantly clear from the wholesale bills that WorldCom receives from SBC on a monthly basis – including those generated by SBC's Carrier Access Billing System ("CABS") in BOS-BDT format – that SBC is charging WorldCom incorrectly for UNEs, combinations of UNEs and activities related to provisioning of those items. Outputs from monthly CABS bills that WorldCom receives for UNE Platform-based services include a Universal Service Order Code ("USOC") with an abbreviated description of the UNE or activity that the USOC purports to reflect, a rate associated with that UNE or activity, and the number of times for that particular month that SBC Illinois has charged WorldCom for the UNE or activity related to that USOC. The bill does not provide cite any source document (e.g., tariff or interconnection agreement). Thus, based on SBC's billing for wholesale services, it is impossible for CLECs to cogently discern what they are being charged for, the basis of the charges, and why the charges are being applied.

SBC addressed billing issues in the affidavit of Scott Alexander and the joint affidavit of Mark Cottrell and Denise Kagan ("Cottrell/Kagan"). These individuals paint a rosy picture of SBC's billing capabilities that is belied by recent SBC statements about its wholesale billing, information that SBC sent to WorldCom (and, presumably, other CLECs) in February 2003 indicating that it will receive credits to reflect a "reconciliation" of UNE-P charges, and WorldCom's commercial experience with SBC Illinois' wholesale billing.[9]

For example, Cottrell/Kagan claim that "SBC Illinois provides CLECs with accurate timely, and auditable billing and usage information in compliance with the Act."[10] Cottrell/Kagan attempt to minimize the billing errors that CLECs identified asserting that "none

[9] Lichtenberg Reb. Aff., WorldCom Ex. 3.4, ¶ 4.

[10] Cottrell/Kagan Reb. Aff., p. 2.

of the billing claims raised by the CLECs reflect systemic wholesale billing problems that are likely to recur."[11] Instead of addressing specific issues raised by WorldCom, Cottrell/Kagan brushed aside specific allegations with general, sweeping contentions:

> Many of the claims raised by CLECs describe incidents that are outdated or involve small disputed amounts, or stem from one-time system changes, and thus do not indicate any competitive impacts on CLECs. Other claims raised by CLECs are so general and lacking in detail that it has been difficult for SBC Illinois to investigate and respond to their claims. Although CLECs do raise claims of billing error, none of their claims demonstrate any systemic issues with SBC Illinois' billing OSS, and or succed in rebutting SBC Illinois' showing that its billing OSS are compliant with checklist item 2.[12]

The Cottrell/Kagan affidavit does not comport with reality. As an initial matter, it fails to answer any of the specific problems that Ms. Lichtenberg identified with respect to widespread inaccuracies that are contained in the monthly wholesale bills received by WorldCom that are generated through SBC Illinois' Carrier Access Billing System ("CABS"). Indeed, while Ms. Lichtenberg provided a list of Universal Service Ordering Codes ("USOCs") and rates that SBC has been charging WorldCom for activities and products associated with those USOCs, Cottrell/Kagan did not and could not answer why any such rate was appropriately being charged to WorldCom for services it provides to end user customers via the Unbundled Network Element Platform ("UNE-P" or "UNE Platform"). Ms. Lichtenberg described a $53.01 charge associated with the "UJR" and "UPC" USOCs that SBC has charged WorldCom in each month since August 2000 well over a thousand times. Ms. Lichtenberg noted that for months in which WorldCom has not provided "new lines" or "additional lines" to customers, SBC has been

---

[11] *Id.*

[12] *Id.*, pp. 2-3.

charging WorldCom outdated line connection charges that are contrary to SBCs UNE-P tariff. Ms. Lichtenberg further described the fact that SBC has been charging WorldCom \$5.01 monthly recurring charge for unbundled local switching ports when SBC was ordered by the Commission to revise that rate in an order issued in Docket 00-0700 on July 10, 2002. The amount of incorrect charges that SBC has assessed to WorldCom are substantial. Cottrell/Kagan fail to address any of these issues.

Indeed, SBC has admitted that many of the charges and USOCs that Ms. Lichtenberg described in her direct affidavit do not comport with its existing tariffs and should not be applicable to UNE-P ordering or provisioning. In response to WorldCom's inquiry about USOCs and associated rates that routinely appeared on WorldCom UNE-P bills from August 2002 through January 2003, SBC indicated:

> As noted in the response below, the following non-recurring charges are not currently applicable to the ordering and provisioning of UNE-P in Illinois : (1) NR9UU, SO Charge-Initial Basic Port (\$17.37); (2) SEPUP, Processing Charge-Establish (loop order) (\$13.17); (3) UJR, Basic Line Port-Residence (\$53.01); and (4) UPC, Basic Line Port-Business (\$53.01). Based on a review of its electronic ordering and billing systems, SBC Illinois has confirmed that these USOCs are not, in fact, currently being applied to UNE-P orders from MCI that flow through the those systems. To the extent that these rates have been charged to MCI in Illinois during periods of time when they were inapplicable, such incorrect charges appear to have been the result of errors in manually handling a small percentage of orders that fell out of the electronic ordering system.
>
> The other USOCs listed below are all properly applicable to MCI's bills for UNE-P. In the case of six of those USOCs, however, the rates listed below are not consistent with the currently effective tariff rates for UNE-P. These USOCs include the following non-recurring charges (NR9F6, NR9UV, and SEPUC) and the following recurring charges (UJR, UPC and UPZ). Our review indicates that the MCI-specific UNE-P pricing table in the Illinois CABs billing system was not updated when changes

to those rates became effective at various times during 2002. The Company in the process of updating those tables.[13]

Each of the above-noted USOCs and rates routinely appeared on WorldCom UNE-P CABS bills from at least August 2002 through January 2003. WorldCom purchases UNE-P and unbundled local switching and shared transport out of SBC Illinois' tariffs. SBC response to WorldCom's USOC rate questions acknowledges that SBC has assessed charges to WorldCom that are not consistent with its tariffs and Commission-approved Total Element Long Run Incremental ("TELRIC") recurring and nonrecurring rates associated with UNE-P. Simply put, that fact cannot be squared with the position of Cottrell/Kagan that SBC's bills are accurate, timely and auditable.

Moreover, while SBC's answers to WorldCom's billing questions attempt to leave the impression that billing errors are insignificant or have been fixed, that is not true. For instance, while SBC says they are not applicable to UNE-P ordering or provisioning in Illinois, WorldCom was able to discern from its February 16, 2003 CABS bill that SBC continues to bill WorldCom for the following USOCs at the following rates: NR9UU, SO Charge-Initial Basic Port ($17.37); (2) SEPUP, Processing Charge-Establish (loop order) ($13.17); (3) UJR, Basic Line Port-Residence ($53.01); and (4) UPC, Basic Line Port-Business ($53.01). That is true despite SBC's response to WorldCom's billing questions which indicates that SBC checked its ordering and billing systems and confirmed that those USOCs "are not, in fact, currently being applied to UNE-P orders from MCI that flow through the those systems." In addition, WorldCom has confirmed that its February 16, 2003 CABS bill continues to include a $5.01

[13] *See* Response of SBC Illinois to a portion of the data requests contained in WorldCom letter from Darrell Townsley to Karl B. Anderson, Counsel for SBC Illinois, dated February 19, 2003, response to request No. 1.0. Lichtenberg Reb. Aff., WorldCom Ex. 3.4, Schedule 1.

monthly recurring charge for the unbundled local switching port for which WorldCom should be charged no more than $2.18. This unbundled local switching overcharge has been assessed to WorldCom by SBC hundreds of thousands of times on a monthly basis at least since August 2002, and continues to appear on WorldCom's latest bill. Again, WorldCom's commercial experience with SBC's wholesale billing cannot be squared with the position of Cottrell/Kagan that SBC's bills are accurate, timely and auditable.

In addition to SBC's acknowledgement that its wholesale bills do not reflect accurate rates for UNE-P and WorldCom's commercial experience with SBC's inaccurate wholesale bills, SBC has indicated that it is "reconciling" Illinois UNE-P charges. As Ms. Lichtenberg mentioned in her Phase 2 Direct Affidavit, on or about February 6, 2003 SBC indicated that WorldCom would be receiving a credit from SBC to reflect a "reconciliation" of UNE-P charges.[14] The specific amount of credit that SBC indicated it would be providing to WorldCom to "reconcile" UNE-P charges for Illinois is approximately $2.1 million. While credits started to appear on WorldCom's February 16, 2003 CABS bill, no credit was applied for misbilled UNE-P nonrecurring charges, and that WorldCom has been unable to determine the bases for the credits that are being applied to some recurring charges. It remains unclear exactly what SBC is "reconciling" – in other words what the credits are for and how and why they are being applied. Clearly, SBC's behavior here does not portray a robust billing system which produces auditable and correct bills.[15]

---

[14] Liechtenberg Dir. Aff., WorldCom Ex. 3.3, ¶ 15.

[15] Lichtenberg Reb. Aff., WorldCom Ex. 3.4, ¶ 10.

SBC witness Scott Alexander also addresses the billing issue. Mr. Alexander's rebuttal affidavit raises the issue that any determination as to whether particular rates have been appropriately applied in a specific situation requires an analysis of that CLEC's interconnection agreement to determine whether it is to be billed items at the effective contract rates, or at the tariffed rates. In his opinion, Mr. Alexander believes that effective contract rates apply unless an amendment to a CLEC's contract incorporates updated rates or an effective tariff is incorporated into the contract by reference. Mr. Alexander also claims that if a CLEC's effective agreement contains rates, terms and conditions for a particular UNE, then the CLEC may not unilaterally elect to take the same UNE under an effective tariff.[16]

Mr. Alexander's affidavit implies that all of the billing errors identified by CLECs are not legitimate because they may not be properly purchasing items from a tariff or have their interconnection agreements amended. Mr. Alexander's contentions certainly do not apply to the billing accuracy issues that WorldCom has raised. However, as WorldCom witness Ms. Lichtenberg observed,[17] WorldCom purchases unbundled local switching and shared transport and UNE-P out of SBC Illinois' tariffs. SBC has not disputed that WorldCom purchases these items out of its tariff. Indeed, SBC has indicated to WorldCom that the unbundled local switching and shared transport that is in the SBC/WorldCom interconnection agreement is not the same unbundled local switching and shared transport that SBC uses to provide UNE-P. As such, it is not possible for WorldCom to purchase unbundled local switching and shared transport and, in turn, UNE-P from that interconnection agreement. Instead, WorldCom purchases those items from SBC Illinois' tariffs.

---

[16] Alexander Reb. Aff., pp. 5-6.

[17] *Id.*, ¶¶ 12-15.

Thus, all of the rates that WorldCom pays for these items come from SBC's tariffs and the Commission's orders that have determined the just and reasonable rates recurring and nonrecurring for those items. Any inference that Mr. Alexander is attempting to make does can not apply to WorldCom's billing disputes. Moreover, if Mr. Alexander believes that his analysis somehow applies to the rates and USOCs that were identified in Ms. Lichtenberg's Direct Affidavit, he has failed to address in any manner what he believes the appropriate rates are that WorldCom should be charged or the basis for such rates. Mr. Alexander's affidavit does nothing to shed light on how SBC's wholesale billing is accurate and appears to exacerbate Commission and CLEC confusion about what rates should apply.

Finally, Mr. Alexander's assertion that a CLEC may not unilaterally elect to take the same UNE under an effective tariff if it has that same UNE in its contract is belied by SBC's tariffs. For example, the plain language of SBC Illinois unbundled local switching tariff plainly states that a CLEC with an interconnection agreement can purchase out of the tariff:

> Unless otherwise provided in an interconnection agreement or amendment thereto between the Company and a telecommunications carrier which is dated after June 30, 2001, telecommunications carriers that already have an interconnection agreement with the Company pursuant to Section 252 of the Telecommunications Act of 1996 shall be permitted to purchase ULS-ST under this tariff. However, a telecommunications carrier is not required to have an interconnection agreement with the Company before subscribing to ULS-ST under this tariff. ULS-ST is available to a requesting telecommunications carrier for the provision of local exchange, interexchange that includes local, local toll, and intraLATA toll, and exchange access telecommunications services within the LATA to its end users or payphone service providers.[18]

---

[18] SBC Illinois ULS-ST tariff, SBC Illinois Tariff 20, Part 19, Section 21, 5th Revised Sheet No. 1, effective July 12, 2002.

Similarly, SBC Illinois' UNE-P tariff plainly states that a CLEC with an *interconnection agreement can purchase out of the tariff:*

> Unless otherwise provided in an interconnection agreement or amendment thereto between the Company and a telecommunications carrier which is dated after June 30, 2001, that telecommunications carrier shall be permitted to subscribe to Pre-Existing and New UNE-P under this tariff regardless of whether or not the telecommunications carrier has an effective interconnection agreement with the Company pursuant to Section 252 of the Telecommunications Act of 1996.[19]

Based on the foregoing passages from SBC Illinois tariffs, the inference in Mr. Alexander's affidavit that a CLEC may not unilaterally elect to take the same UNE under an effective tariff if it has that same UNE in its contract is clearly wrong.

Neither the joint affidavit of SBC witnesses Cottrell and Kagan nor the affidavit of SBC witness Scott Alexander directly address the wholesale billing issues that WorldCom has raised in Phase 2 of this proceeding. The undisputed record demonstrates that SBC Illinois is failing to "provide competitive LECs with . . . complete, accurate and timely wholesale bills,"[20] and has been unable to date to "demonstrate that it can produce a readable, auditable and accurate wholesale bill in order to satisfy its nondiscrimination requirements under checklist item 2."[21] For these reasons, SBC Illinois has failed to demonstrate that it provides nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) and checklist item 2. Accordingly, the Commission should withhold any favorable recommendation on SBC's request for Section 271 authority unless and until SBC demonstrates

[19] SBC Illinois UNE-P tariff, SBC Illinois Tariff 20, Part 19, Section 15, 5th Revised Sheet No. 5, effective July 12, 2002.

[20] *In the Matter of Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, (CC Docket No. 01-138), ¶ 13 ("*Pennsylvania Order*").

[21] *Pennsylvania Order* at ¶ 22.

that it provides CLECs with complete, accurate and timely wholesale bills that are readable, accurate and auditable. Absent such a showing, SBC cannot demonstrate that it satisfies the nondiscrimination requirements under checklist item 2.

B. Line Loss Notification ("LLN") Problems Continue.

In Phase 1 of this proceeding, SBC witness Cottrell attempted to leave the Commission with the impression that LLN problems had been solved. SBC continues in its efforts to leave this impression despite that fact that real world commercial experience indicates that LLN problems persist. Indeed, in a written answer that SBC provided to a Staff's request for "a list of all January system changes made to correct line loss notification issues" SBC indicated that:

> SBC Ameritech experienced no instances of undelivered line loss notifiers (LLN) in January, and therefore made no system, process, or procedure changes or table updates resulting from such incidents. As part of the normal operation of its LLN cross-functional team, certain steps were taken to enhance the timeliness of LLN transmission. These steps included the updating of one CLEC's profile table regarding its preferences for method of LLN transmission, and the coaching of individual service representatives. One system change was made to correct a rare, intermittent formatting problem with the LLN circuit ID field. This problem had affected approximately 50 LLNs transmitted to SBC Ameritech's retail organization between November 2002 and January 2003.[22]

An unsuspecting reader might infer from Mr. Cottrell's answer to this question that there were no LLN problems in the month of January 2003. But that would be a mistaken inference. Perhaps the biggest OSS problem that WorldCom has faced in the former-Ameritech region involves SBC's failure to transmit line loss notifications for

---

[22] See Responses to 2/13/03 Workshop questions directed to Mark Cottrell, ICC-5, sent to parties in Docket 01-0662 on February 19, 2003.

thousands of customers. Line loss notifications inform CLECs when a customer has left them to migrate to another carrier and without them the CLECs do not know to stop billing the customers.

SBC has repeatedly said that it fixed the problem with line loss notifications and the problem has repeatedly reappeared. Over the last couple months, the problem with line loss notifications did appear to be largely fixed. But then on January 31, 2003, WorldCom stopped receiving line losses from SBC in the proper format, rendering these line losses effectively useless. Apparently, SBC mistakenly changed the format of the line loss information it transmits to WorldCom but never notified us that it had done so. As a result, WorldCom was not able to process over 5,000 line losses.Needless to say, it was WorldCom that reported this problem to SBC, not vice versa. While SBC has spent much time and energy creating its line loss reporting teams, these teams apparently look only at whether a line loss is generated and not whether that line loss can actually be used by a CLEC. Given the substantial number of LLNs impacted, one would think that Mr. Cottrell would have been aware of this particular LLN problem, but his answers to questions from Staff and others leaves the impression that he, and presumably the entire cross-functional LLN team, were totally unaware of this customer impacting problem.[23]

Based on communications with SBC, WorldCom and SBC worked out a fix for the problem and that fix appears to be working as of today. But the problem should never have arisen in the first place. According to SBC, the problem was caused when SBC's EDI mistakenly changed the WorldCom profile stored in its production systems to LSOG 5 while WorldCom was testing LSOG 5 in the SBC test environment. This problem shows that SBC continues to lack the most basic controls over its change management process, even when it impacts an issue

[23] Lichtenberg Dir. Aff., WorldCom Ex. 3.3, ¶ 19.

that has been the subject of significant ICC scrutiny. SBC has promised to correct this problem going forward by ensuring that its test personnel are not able to make changes to the production environment, but SBC should have made this change the last time that this sort of a problem occurred rather than after it impacted over 5000 customers. It appears that the line and change management processes are still not strong enough to support commercial activities, despite SBC's protestations otherwise.

Indeed, At pages 43 through 46 of its reply comments, SBC acknowledges that Line Loss Notice ("LLN") problems have persisted. However, SBC attempts to characterize the LLN problems cited by CLECs as insignificant since they were limited in time and scope and were resolved by parties quickly on a business-to-business basis. While it apparently believes that LLN issues are not really a problem, SBC points to the LLN Communications Improvement Plan it filed in Michigan as additional assurance that future LLN issues will be addressed in an effective manner.[24]

Paper promises that future LLN problems will be resolved in an effective manner provide little if any comfort to CLECs that have suffered through customer impacting LLN problems for over a year. On March 6, 2003 – three days after SBC filed its Reply Comments and rebuttal affidavits in this proceeding -- SBC sent a notification to CLECs in an accessible letter identified as CLECAMS03-019 stating:

> The purpose of this accessible letter is to inform CLECs of a Line Loss Notification issue identified on 3/5/03 in the SBC Midwest Region 5-State. As a result of a CLEC report, SBC Midwest Region 5-State investigation has identified situations where notifications were sent on lines that CLECs did not lose. These occurred when the winning CLEC used LSOR version 5 and assumed the main billing telephone number (BTN) only, of a multi-line account. Loss notifications were sent

---

[24] Reply comments, p. 46; Cottrell Reb. Aff. ¶¶ 22-23.

> appropriately on the lost billing number. In addition, loss notifications appear to have been sent as well on the new main billing number, when it was not an actual loss. It appears this issue affected less than 3000 transactions over a period of several months.
>
> Additional analysis is currently being conducted to determine the start date of the issue, the exact number of Line Loss Notifications (LLNs) sent in error, the CLECs impacted and to better understand the root cause. SBC Midwest Region 5-State will provide more information regarding this issue in a related accessible letter at the earliest possible date. All affected CLECs will be contacted directly by their OSS Manager.

This notification came just after CLECs and SBC completed discussion of the so-called line loss compliance plan in Michigan. One of the biggest issues in this discussion was the CLEC request that an announcement of a line loss problem be sent as soon as the problem was detected and that all CLECs be informed. While SBC did not want to follow this process, it appears from SBC's March 6 accessible letter that such a notification was indeed necessary. It is clear that SBC has not adequately addressed LNN problems. The problem alluded to in the March 6 accessible letter is the same LLN problem SBC had previously - - that partial migrations are not generating line losses the way they should. Shortly after receiving the March 6 letter, WorldCom contacted SBC in an attempt to determine to what extent this latest LLN problem would impact WorldCom's operations. While SBC has confirmed that WorldCom is impacted by this LLN problem, but as of the date that WorldCom submitted its rebuttal affidavits SBC had been unable to provide any information as to the level of that impact. The information that has been provided since that time simply reaffirms that LNN problems are impacting WorldCom and its customers. Clearly, SBC's 5-state investigation team doesn't do much investigating.

In addition to continuing LLN problems, it has come to Worldcom's attention that so-called "winbacks" may not have been reported in the line loss performance measure identified as Michigan 13 that was evaluated by BearingPoint. WorldCom also is concerned that SBC

Illinois may not report these losses in the new Michigan 13 ("MI 13") and Michigan 13.1 ("MI 13.1") metrics on line losses adopted in the last six month reviews. CLECs had always intended all loss notices be covered by the metric. Whether the loss is to other CLECs or back to SBC Illinois the business need for timely loss notices to the losing carrier does not differ. The old version of Performance Measure MI 13 describes the start time for the measuring the time interval for the loss notice to the losing carrier from the generation of a completion notice to the "new carrier" to which a customer switches his or her service. However, SBC Illinois now construes Performance Measure MI 13 as originally constructed to exclude winbacks because completition notices were either not transmitted from SBC Illinois to itself when a customer switched service from a CLEC back to SBC, or SBC was simply ignoring those notices and availing itself of other more timely and superior line loss information that was not available to CLECs. In other words, SBC apparently did count in the old MI 13 situations in which a customer leaves a CLEC to return to SBC Illinois – a so-called "winback" where SBC wins back the customer.

The new MI 13 and MI 13.1 measures use "completion of work" as the start time in the definition, business rules and calculation section. However, the second sentence of the business rules states: "The date that the last service order associated with the LSR is provisioned is the work completion date." SBC Illinois now appears to be using the word LSR, which is a CLEC ordering vehicle, as a loophole in the new metric for excluding "winback" line loss notices. If winbacks were singled out from the other line loss notices and agreed to as exclusions in the six month review, the place to put information would have been in the Exclusions section of the metric.

While MI 13 as originally interpreted by SBC apparently excluded winbacks, the Illinois Commission directed SBC Illinois to change the performance measure because it found in a complaint case brought by Z-Tel Communications that SBC Illinois was providing inferior and discriminatory access to OSS by providing CLECs with late and inaccurate LLNs. At the same time SBC was providing CLECs with late and inaccurate LLNs, SBC was utilizing superior and more timely information to instigate winback marketing to customers who had left SBC, thereby providing SBC an unearned marketing advantage. In the Z-Tel complaint case the Commission found that SBC Illinois' actions were *per se* impediments to competition that violate Illinois law.[25] In discussing the discriminatory treatment that CLECs were experiencing as a result of SBC Illinois' LLN practices, the Commission specifically addressed Performance Measure MI 13 and its shortcomings:

> The Commission finds that the LLN performance measure ("MI 13") needs to be improved. It is clear from the record in this case that MI 13 as it currently exists, is not adequately measuring Ameritech's LLN failures. The performance measure shows Ameritech completing line loss notices in a timely manner in about 90-95% of the time. (Staff Ex. 1.0 at 14). Whereas, Z-Tel provided testimony that for the period from March 1, 2002 through March 11, 2002 (after the Complaint was filed) no less than 42% of the records received from Ameritech were provided to Z-Tel more than 6 days after the Ztel customer disconnected from Z-Tel. (Reith Direct Testimony at 9). There is clearly something wrong here.
>
> Staff witness Weber identified two problems with the way Ameritech measures its performance in delivering LLNs. First, the data Ameritech reports does not account for loss notifications that are supposed to be sent to a losing carrier but are not. Second, Ameritech measures the timeliness of its loss notification transactions from the time the completion notice is sent to the new carrier, instead of from the time the disconnect order completes for the losing carrier. Therefore, if Ameritech's service order completion notices to the new carriers are delayed, the performance measure would not account for the delay. (Staff Ex. 1.0 at 14).
>
> Staff witness Weber testified that since January 1, 2002, 83 CLECs could have been affected by the loss notification issue. (Staff Ex. 1.0, p. 6). The performance measure needs to be redesigned to address the problems identified by Staff. Ameritech is directed to provide reports, to be reviewed by Z-Tel and Staff, describing its efforts in correcting the problems with MI 13.[26]

[25] Z-Tel Communications, Inc. v. Illinois Bell Telephone Company d/b/a Ameritech Illinois, Order, Docket No. 02-0160, issued May 8, 2002 ("Z-Tel Complaint"), p. 26.

[26] Id., p. 26.

While the Illinois Commission clearly wanted changes made to MI 13 to ensure that SBC was not discriminating in the provision of LLNs to CLECs and itself, SBC Illinois has now advised CLECs and Commission Staff that the revised MI 13 discussed in the six month review also excludes winback LLNs. This demonstrates that MI 13 has been severely compromised since it excludes the biggest problem in losses. This revelation about MI 13 and MI 13.1 puts SBC Illinois' claims about this metric in a whole new light. SBC witness Mr. Cottrell's affidavit that indicates that SBC has generated line losses over the last 6 months, apparently excluding all winbacks. Moreover, it appears to demonstrate that SBC Illinois can't even figure out how many LLNs it has actually sent - ever.

Since most of the line losses in SBC Illinois territory are more likely than not winbacks, i.e., customers who leave a CLEC and return to SBC Illinois, and most of the line loss problems have been with winbacks, this is disturbing and calls into question whether the metrics results reported by SBC Illinois for performance measure MI 13 mean anything. The Commission should require testing of measure PM13 without the exclusion of winback lines losses.

The confusion surrounding whether winback LLNs have been included in reports on MI 13 and 13.1 became apparent during a conference call concerning the Michigan OSS Compliance Plan on March 12, 2003. During that call, representatives of SBC indicated that it was SBC's <u>intent</u> that MI 13 and MI 13.1, as revised in the most recent 6 month review process, includes winbacks. That intent was reflected in an e-mail from James Ehr to participants in the 6 month review process dated June 12, 2002.[27] Despite SBC's stated intent, there was some concern

---

[27] Lichtenberg Reb. Aff., WorldCom Ex. 3.4, ¶ 26, Schedule 2.

expressed that the business rules for MI 13 and MI 13.1 (as revised in the latest 6 month review and as reflected in the performance measure tariff filed by SBC Illinois on February 7, 2003) would require winbacks to be excluded. While SBC has agreed to review and revise the business rules for MI 13 and MI 13.1 to make clear that winbacks are not excluded from reporting under the revised measures, WorldCom remains concerned that MI 13 and MI 13.1 as originally constructed and as tested by BearingPoint failed to include winback LLNs. For those tests to be valid, the Commission must ensure that winback LLNs were not excluded and, if they were, that those measures be included and the new metrics tested.

The bottom line is the LLN problems continue. These persistent and nagging LLN deficiencies demonstrate that SBC's OSS software is not stable and that SBC's repeated attempts to fix LLN issues have not been effective. It is clear that improvements are needed prior to, not after, section 271 approval. The Illinois Commission needs to be confident that customer impacting LLN problems have been resolved and that SBC follows change management processes before it can conclude that SBC is providing nondiscriminatory access to OSS. SBC has failed to demonstrate that it provides access to OSS in a nondiscriminatory manner required by the TA96. The Commission should withhold any positive recommendation on SBC Illinois' 271 application unless and until LLN problems are fully and finally resolved.

C. Transmission of Incorrect Completion Notices.

WorldCom complained about SBC's practice of sending completion notices on some order that had not actually been completed.[28] SBC witness Justin Brown submitted an affidavit addressing service order completions transmitted by SBC to WorldCom in error. The record

[28] Lichtenberg Dir. Aff., WorldCom Ex. 3.3, ¶¶ 24-28.

demonstrates that upon receiving an erroneous completion notice from SBC, WorldCom commences billing the customer associated with that notice. However, if the customer has not been migrated to WorldCom, the customer is being billed by SBC or another CLEC, resulting in the customer being double billed. Mr. Brown readily admits that SBC transmits erroneous completion notices, but downplays the significance based on his assertion that they occur infrequently.[29] According to Mr. Brown, WorldCom should not get a LLN for these customers because the order should not have been completed in the first place.[30] Mr. Brown's position is absurd. Whether it should have or not, SBC has transmitting notices indicating that an order completed, which results in WorldCom initiating billing for the customer. The OSS message that tells WorldCom that a customer has switched back to SBC Illinois or to another CLEC is a LLN. Accordingly, it is incumbent upon SBC to send a LLN to WorldCom or any CLEC as soon as SBC becomes aware that it has sent a completion notice in error. The LLN will contain the effective date that billing should have been stopped. This would be the date the order was completed in error and would allow these orders to be treated via standard processes.

Mr. Brown's excuse for not sending a LLN is that the its e-mail written report provides WorldCom with more detail than the LLN. Mr. Brown's defense of SBC's process fails to explain why it is that the order completed in the first place, does not note whether the customer really ever received service from MCI, fails to state whether SBC reversed the billing for the customers they mistakenly transferred. Simply put, there is no root cause identified as to why this problem occurs or how it can be fixed. In fact, Mr. Brown's non-response highlights how the entire process employed by SBC is manual and that SBC disregards CLEC's requests that

---

[29] Brown Reb. Aff. paragraph, 22.

[30] *Id.*, paragraph 24.

SBC follow standard processes – in this case issuing an LLN – so that customers are not negatively impacted by the erroneous completion notices that SBC transmits to CLECs. That is necessary to ensure that the customer is not double billed.

Moreover, the erroneous completion notices are not included in any of SBC's performance metrics. To the contrary, the performance measure for Service Order Completion ("SOC") will show only that the SOC was sent on time, never capturing the fact that it was taken back and should have never been sent in the first place. The line loss is not missing because SBC Illinois unilaterally decided that it doesn't need to send LLNs in this situation. Accordingly, neither the SOC nor LLN performance measures will capture this acknowledged problem.

As Ms. Lichtenberg discussed in her Phase 2 Direct Affidavit, and as Mr. Brown's rebuttal affidavit makes clear, SBC's e-mail transmissions on erroneous completion notices are only one example of a more general issue – SBC's use of non-automated processes to send some notices to WorldCom. SBC continues to send a miscellaneous line loss notifications via e-mail, and, as noted below, sends some "working service conflict" notifications via fax. The Commission should require SBC Illinois to eliminate the use of ad hoc processes that are entirely outside the normal flow of automated notices before it will provide a positive recommendation on SBC Illinois' 271 application. The Commission should make clear that SBC must eliminate the transmission of erroneous completion notices before it provides a positive recommendation to the FCC on SBC Illinois' 271 application.

D. Working Service Conflict Problems.

WorldCom has experienced serious problems in submitting orders for new lines in Illinois. As Ms. Lichtenberg explained, when a CLEC transmits a request for new service, or additional service such as a second line, SBC needs to determine whether to dispatch a technician to install the new line. SBC may be able to install service without dispatching a technician if the customer is moving into a home and the previous resident left without turning off the telephone service. SBC may also be able to avoid a dispatch when a customer orders a second line because frequently SBC will have built a second line to the home in order to have spare capacity for a second line order. SBC seems to believe it can determine from the CLEC whether the order should be provisioned using an existing line to the home or an entirely new line. SBC therefore transmits a "working service conflict" ("WSC") form to the CLEC asking for this information.[31] Ms. Lichtenberg enumerated the problems with SBC's working service conflict process, including CLECs not knowing what information that they must provide to SBC and the fact that SBC forces CLECs to use manual facsimile processes for WSC requests and responses.

In response, SBC witness Justin Brown maintains that there are no problems with the WSC process. Mr. Brown comments on WorldCom's complaint that WSC did not receive WSC notification forms because SBC directed the forms to the wrong facsimile number.[32] SBC acknowledges that WorldCom forwarded to SBC the facsimile number in accordance with accessible letter CLECAM02-349, but indicates that SBC failed to retrieve the number and forward it to the Local Service Center. As a result, the forms were misdirected. Apparently the facsimile number was not retrieved and forwarded to the LSC due to a death in the family of the responsible employee.[33]

Ms. Lichtenberg noted that WorldCom appreciates SBC's candor on the issue of the misdirected WSC forms. Nevertheless, the incident again highlights the general problems that

---

[31] Lichtenberg Dir. Aff., WorldCom Ex. 3.3, ¶ 35.

[32] Brown Reb. Aff., ¶ 13.

[33] *Id.*, footnote 1.

occur as a result of ad hoc manual processes. Indeed, soon after SBC released the accessible letter describing the WSC process on July 24, 2002, WorldCom conveyed its concern that the WSC form was going to be sent by facsimile and instead asked for an e-mail process similar to the service abandonment form to which the WSC is related. With the service abandonment form process, SBC sends WorldCom an e-mail alerting it of abandoned stations (where a customer has left but service is still in place), which is the general reason that there is working service conflict in the first place. SBC refused to implement the e-mail process and insisting instead on the facsimile process which resulted in WSC forms being misdirected. WorldCom and other CLECs disagreed vehemently at the CLEC User Forum ("CUF") meeting that the facsimile process should move forward, but SBC unilaterally rolled out this process anyway. WorldCom regrets that the WSC faxes were sent to a wrong fax number due to a death in an employee's family, but this simply points out the poor track record that SBC has with its many manual processes.

As discussed above, the Commission should require SBC Illinois to eliminate the use of ad hoc processes that are entirely outside the normal flow of automated notices before it will provide a positive recommendation on SBC Illinois' 271 application.

E. Missing Service Order Completions ("SOCs") and Cancellations.

In addition to sending erroneous completion notices on some orders and failing to process disconnect orders, SBC repeatedly cancels some WorldCom orders without justification and without sending proper notice to WorldCom. It also fails to send reject notices on some orders that it properly cancels.[34]

---

[34] Lichtenberg Dir. Aff., WorldCom Ex. 3.3, ¶¶ 29-33.

Every day, WorldCom calls SBC to report orders on which it has not received expected completion notices. After SBC researches the issues, it often reports that it erroneously cancelled the orders. Or it reports that it should have sent reject notices on the orders but failed to do so. SBC provides a variety of explanations for these cancellations including both manual errors[35] and systems errors.[36] But the result is the same regardless of the cause. The WorldCom orders are not processed, but SBC fails to inform WorldCom of this fact.

While the number of LSRs that SBC erroneously cancels is not high in percentage terms,the problem is important nonetheless. When SBC incorrectly cancels an LSR, the customer does not receive service from WorldCom until WorldCom detects the problem and calls SBC to determine what went wrong. If the order is for a new line, the customer does not receive service at all until WorldCom detects the problem.

At present, WorldCom checks each day to determine whether there are any completion notifications that it has failed to receive within three days of the due date on an order. Based on such checks, WorldCom presently has approximately 490 missing completion notices in the 5 state SBC Midwest region as of February 18, 2003. Two hundred and two of these missing notifications were in Illinois.[37]

---

[35] For example, sometimes SBC service representatives must cancel service orders internally as a result of internal issues but then are supposed to create new service orders so that the WorldCom Local Service Request ("LSR") is not cancelled. They sometimes fail to create the requisite service orders. Or, if they are supposed to cancel the LSR, they fail to send the notice informing WorldCom of that fact.

[36] SBC also cancels some orders because WorldCom did not respond to the "working service conflict" form that is described above. But the reason WorldCom did not respond is that SBC failed to send the form to the correct location. And, in any case, SBC needs to notify WorldCom if it cancels an order.

[37] Until the week of February 3, the impact of the problem was exacerbated because the method SBC insisted on for correcting each error was unnecessarily time consuming. Beginning in October, SBC unilaterally insisted that WorldCom had to call SBC to report missing notifiers rather than using the previously established process under which WorldCom would transmit spreadsheets that included all missing notifiers. SBC would only discuss five orders during a phone call, and it generally took

SBC witness Justin Brown implies in at paragraph 17 footnote 2 of his rebuttal affidavit *that SBC allows Worldcom to send missing notifiers, including* SOCs and erroneous cancellations, via spreadsheets. Mr. Brown claims contends that an LSC Line Manager incorrectly indicated that the process had changed and WorldCom would be required to call the LSC to report the missing notifiers rather than using the previously established process of sending them via spreadsheet. According to Mr. Brown, WorldCom was informed by its account manager on February 5, 2003 that the line manager in question has been updated on the correct procedure.

Mr. Brown's account of the missing notifier process change does not jibe with WorldCom's actual experience. WorldCom was informed in October 2002 by its account team that SBC was requiring that it stop sending missing notifier information via spreadsheet, not by a Line Manager at the LSC. SBC's account of what happened is inaccurate. As a result of the direction WorldCom received from its SBC account team in October, WorldCom has been required to phone in missing notifiers to the LSC. Contacting the LSC is much more cumbersome and time-consuming than the spreadsheet process. WorldCom appreciates the fact that SBC has now confirmed that the information it received from its account team was erroneous and looks forward to reinstituting the spreadsheet process for missing notifiers. However, this incident once again underscores the problems with manual processes instituted by SBC. Since WorldCom has been in the local market in Illinois since December 2000, the Local Ordering Center ("LOC") should have learned by now how to handle missing orders.

---

approximately an hour to discuss these five orders. SBC recently agreed that it would permit WorldCom to provide a trouble ticket directly to the account team if it included more than 15 orders. Hopefully, this will alleviate some of the impact of the cancelled orders.

With respect to cancellations, Mr. Brown also attempts to minimize the significance of the problem. His explanation points directly back to the manual handling of the problems that appear to be more the rule than the exception at the LSC. Indeed, SBC has provided a more complete explanation of why it is canceling WorldCom orders without notifying WorldCom. WorldCom transmitted to SBC a list of 160 orders for which it had not received a completion notice in November or December. SBC returned a spreadsheet analyzing these orders. The legend at the back of the spreadsheet provides the different explanations SBC gave for canceling each order. The vast majority were cancelled as a result of systems or manual errors on the part of SBC (with SBC's responsibility for the remainder somewhat less clear). SBC service representatives canceled 13 orders in its back-end system ASON, but failed to reissue these orders. They cancelled 41 additional orders in ASON that they did reissue but for which SBC failed to transmit a completion notice. SBC cancelled 22 orders "due to reject[s]" without transmitting rejection notices to WorldCom, cancelled 13 additional orders that it said were for valid rejects but for which it also failed to transmit rejection notices, cancelled five more orders that should have been rejected because the customers were in the process of switching to another carrier, and cancelled 43 orders as a result of the working service conflict issue.

The problem has only grown worse since November and December. As of February 27, WorldCom was missing 135 completion notices in Michigan, 211 in Illinois and 132 in the other states in the former SBC Midwest region. WorldCom has submitted the list of orders for which it is missing completion notices to SBC for analysis. It is likely that SBC will provide reasons similar to those it gave for the November/December orders. There is no excuse for SBC's continuing cancellation of orders without transmission of any notification to WorldCom.

Before the Commission can reasonably conclude that SBC provides nondiscriminatory access to OSS, SBC must stop canceling orders erroneously and must notify WorldCom when it does cancel orders, regardless of the cause. The Commission should withhold any favorable recommendation with respect to SBC Illinois' 271 application unless and until it demonstrates that this problem is resolved.

F. Performance Data is Unreliable.

The most fundamental reason that the Commission should refrain from advising the FCC that 271 approval is appropriate is the fact that SBC Illinois' performance data is not yet trustworthy. Both BearingPoint and Ernst & Young found substantial problems with SBC's control over the underlying data and its application of business rules to calculate performance based on the data. Many of those problems have not yet been corrected. As a result, SBC lacks the reliable data needed to demonstrate that its performance in providing wholesale service is non-discriminatory. It also lacks the measurements needed to prevent backsliding after section 271 authority is granted. WorldCom witness Ms. Lichtenberg discussed the performance data integrity deficiencies in-depth in her Initial Affidavit.[38]

Ms. Lichtenberg was not alone in her assessment that SBC's performance measure data integrity is deficient. Other CLECs weighed in on this issue as did the Commission Staff. In fact, based on a thorough analysis of the BearingPoint and Ernst & Young tests, Staff witness Ms. Weber concluded that SBC's performance data remains unreliable. In an affidavit summarizing the conclusions of Illinois Staff, Jeffrey Hoagg explained that Staff was unable to recommend approval of SBC's section 271 application in Illinois because of OSS deficiencies,

[38] Lichtenberg Dir. Aff., WorldCom Ex. 3.3, ¶¶ 47-58.

failures of key performance metrics, and the absence of an effective performance remedy plan, as well as SBC's unreliable performance data.

Moreover, BearingPoint continues to open Exceptions related to performance measure issues. On February 18, BearingPoint issued two new exceptions based on SBC's failure to adequately document the calculation logic it uses to determine performance measurement results. Until SBC's performance reporting improves, there is no way to know whether SBC's performance is nondiscriminatory today and no way to prevent backsliding in the future. The Illinois Staff summarizes:

> The results of the reviews by BearingPoint and Ernst & Young of SBC Illinois' performance measurement data, taken together, significantly undermine the accuracy and reliability of those data. Since those data serve as inputs to any performance remedy plan used to prevent future 'backsliding', the efficacy of any such plan is seriously compromised unless these deficiencies are resolved. Moreover, until those data can be demonstrated to be accurate and reliable by BearingPoint (or another independent third party using a similar analysis), it cannot be relied upon to establish current or future compliance with applicable competitive checklist requirements.[39]

WorldCom agrees with Staff's assessment. The Commission must ensure that performance measurement data are reliable. The only way to accomplish that is to withhold making a positive recommendation on SBC Illinois' 271 application unless and until the performance measurement data is tested by an independent third party, utilizing the methodology employed by BearingPoint. WorldCom urges the Commission to require BearingPoint to continue its testing until it proves that SBC's performance data is reliable. Until that time, the Commission should not provide a positive recommendation to the FCC on SBC Illinois' section 271 application.

---

[39] Weber Dir. Aff. at 4.

G. Line Splitting.

The record in Phase 2 of this proceeding demonstrates that SBC does not provide nondiscriminatory access to OSS that would allow CLECs to engage in line splitting. SBC witness Carol Chapman addresses line splitting. Ms. Chapman attempts to minimize the OSS barriers that will prevent CLECs from being able to implement line splitting in a manner that will promote competition for Digital Subscriber Line ("DSL") service. For example, through the workshop/hearing in this proceeding, it is now clear that SBC will not accept electronic orders for line splitting if the CLEC is on a different version of Electronic Data Interchange ("EDI") than the Digital Local Exchange Carrier ("DLEC"), down to the dot release. That means that CLECs and DLECs who are on different dot releases of software (for example, LSOG 5.03 and 5.04) cannot get line splitting. Moreover, it is apparent that a customer who is served by a line splitting arrangement but wants to disconnect his DSL service cannot do so without risking loss of dial tone for seven days and loss of his telephone number.

Both of these systems limitations are serious impediments to line splitting and will soon affect WorldCom. WorldCom has not yet begun submitting line splitting orders in Illinois but intends to begin doing so soon. WorldCom plans to engage in line splitting by combining DSL service (using the assets purchased from Rhythms, as well as teaming with other DLECs) with WorldCom's local voice service offerings. In doing so, WorldCom's DSL organization would act as a DLEC engaging in line splitting with WorldCom as a voice CLEC. WorldCom has been working to develop a process for placing line splitting orders. But the issues described above will pose serious impediments to WorldCom's plans and could make it impossible for us to create a mass markets DSL product.

WorldCom's mass markets (local voice) organization and its DLEC are not on the same version of EDI. Nor will they be on the same dot release of EDI when both switch to new EDI versions in April. WorldCom's mass markets organization chooses when to move to new versions of EDI and whether to move to those versions based on the functionality they provide and the risks and costs of moving to those new versions. WorldCom's DLEC, on the other hand, like many DLECs, purchases EDI from NightFire – a vendor – and has little choice but to use the version of EDI NightFire sells. And even if its DLEC could move to the version of EDI used by WorldCom's mass markets organization, this would preclude it from providing DSL in conjunction with other CLECs that are on different versions of EDI. More importantly, should a CLEC, like WorldCom, want to team with more than one DLEC, all three companies would need to be on the same dot version of OSS. This seriously limits a CLEC's ability to extend the reach of its DSL offering, since it is likely that multiple DLEC partners would be required to cover the entire SBC Illinois service territory.

SBC must correct the version limitation on line splitting orders or WorldCom may not be able to submit such orders at all. Unfortunately, since the dot version EDI limitation did not become apparent until very recently, WorldCom does not know whether even a work-around would be viable, how costly it would be, or how much inefficiency it would create in the submission of orders. Additionally, WorldCom is concerned about proceeding with plans to implement line splitting while SBC's three-order disconnect process is in place. If WorldCom does go ahead, it appears the three-order process could cause significant harm to WorldCom's customers.

SBC's line splitting processes therefore pose a substantial barrier to CLECs' ability to successfully provide line splitting. Yet line splitting is likely to be critical as more and more customers come to desire broadband service. It is apparent from the record in Phase 2 of this proceeding that CLECs are impeded from participating in the residential high speed data market because of deficiencies in SBC's OSS. The Commission should withhold making a positive recommendation to the FCC on SBC Illinois' section 271 application until SBC demonstrates that it provides access to OSS in a manner that allows line splitting on an efficient and effective basis in Illinois.

H. The Docket 01-0120 Remedy Plan Should Be Adopted For Section 271 Purposes And SBC's "Compromise Plan" Should Be Rejected.

1. Background.

Some procedural background is necessary in order to appreciate the context in which SBC Illinois has proposed its so-called compromise plan. In Docket 01-0120, which was initiated by a joint petition filed on February 5, 2001, by SBC Illinois and numerous Competitive Local Exchange Carriers ("CLECs"), the parties (including Commission Staff) litigated to determine an appropriate wholesale performance remedy plan that SBC Illinois would be required to follow. SBC Illinois, Commission Staff, various CLECs and the Commission, conducted a full evidentiary proceeding in Docket 01-0120, over 17 months, to determine an appropriate wholesale performance remedy plan under which SBC Illinois and its CLEC customers should be required to operate. SBC Illinois, CLECs (none of whose overall positions were entirely adopted in the Commission's Remedy Plan) all had full and fair opportunity to make a record and present their positions in Docket 01-0120.

The Commission issued a final order in Docket 01-0120 adopting the Commission's Remedy Plan and thereby rejected SBC Illinois' post-record suggestion that the Docket 01-0120 effort should be tossed aside and the remedy plan determination made in this docket instead.

The Commission denied SBC Illinois' application for rehearing, which specifically sought to have the Commission defer making a decision on what the appropriate remedy plan should be and instead make that decision in this proceeding. Indeed, SBC Illinois' request for rehearing of the 01-0120 order explicitly indicated that SBC Illinois had developed a compromise remedy plan that it urged the Commission to consider instead of the one it ordered in 01-0120:

> Ameritech has developed a compromise [remedy] plan that would address the concerns noted with respect to the Condition 30 plan, and it could present that plan for the Commission's review in the section 271 proceeding. Subsequent to the July 10, 2002 Order, Ameritech Illinois has continued negotiations and has made significant progress towards reaching a five-state agreement with one of the CLECs that participated in this docket. The compromise proposal is consistent with the July 10 Order's statement that the Condition 30 plan should 'serve as the basis' for future plans. But more importantly, it is consistent with the Merger Order's desire that a remedy plan be established by mutual agreement, and that a remedy plan not be arbitrary or punitive.[40]

By rejecting SBC's invitation to defer ruling on what constitutes an appropriate remedy plan, the Commission stuck by its substantive determination that the Commission's Remedy Plan is a just and reasonable wholesale performance remedy plan for SBC Illinois and its CLEC customers. While neither SBC nor the CLECs were completely happy with the ultimate outcome of 01-0120, the Commission adopted its wholesale remedy plan after a full and fair evidentiary proceeding.

SBC Illinois has failed to provide any reason that justifies tossing all this effort aside for the purpose of adopting an entirely different performance remedy plan for Section 271 purposes than the Commission's Remedy Plan that resulted from the parties' and the Commission's extensive efforts in Docket 01-0120. In reaching its decision concerning what terms and conditions of a remedy plan is necessary to ensure that SBC provides a minimally acceptable

[40] Application for Rehearing of Ameritech Illinois, Docket 01-0120, filed August 9, 2002, page 2.

standard of wholesale service, the Commission, on July 10, 2002, issued its Order adopting the Commission's Remedy Plan for SBC Illinois. In that Order (as revised by an Amendatory Order issued July 24, 2002), the Commission stated, at page 20:

> We note . . . that Ameritech's quest for Section 271 approval has begun and, in its Initial Brief in this docket, it stated that in the Section 271 proceeding it 'will present its performance assurance plan to the Commission, and its proposal for continuing that plan beyond the termination date of Condition 30, and the Commission can review the plan as part of its overall assessment of compliance with the competitive checklist of section 271.' (Ameritech Initial Brief at 67). In its Brief on Exceptions, Staff raises the concern that in a Section 271 proceeding, the Commission will not have the authority to impose on Ameritech the Remedy Plan that the Commission prefers to be in place. We conclude, therefore, that unless otherwise directed by the Commission, the Remedy Plan adopted pursuant to this Order shall serve as the basis for the aforementioned 'performance assurance plan' referenced by Ameritech for Section 271 approval purposes. *The Commission does not believe it is in either its own interest or any of the parties' interest to re-litigate the nuances of the Remedy Plan in the current Section 271 proceeding. Therefore, the Commission wishes to clarify that any future reference (in either concurrent or prospective dockets before the Commission) to a Remedy Plan in place in Illinois, either voluntarily or pursuant to Commission Order, shall mean the Remedy Plan adopted pursuant to this Order.* (emphasis added)

As discussed above, SBC Illinois filed for rehearing of the 01-0120 Order wherein it attacked various substantive components of the Commission's Remedy Plan, but the Commission denied rehearing. SBC Illinois has appealed the Order in Docket 01-0120 adopting the Commission's Remedy Plan (as well as a subsequent Order on Reopening that directed SBC Illinois to remove a purported "termination date" for the Commission's Remedy Plan from the "compliance" tariff that SBC Illinois had filed to tariff the Commission's Remedy Plan) to the Illinois Appellate Court.

2. The 01-0120 Plan Was Fully Vetted And Should Not Be Tossed Aside.

It is with this history in mind that the Administrative Law Judge and the Commission must undertake its evaluation of SBC's so-called "compromise plan." The Commission should not retreat from its findings in the 01-0120 proceeding simply because SBC thinks it's a good idea. After all of the wrangling that resulted in the Commission allowing SBC in this proceeding to submit for consideration the compromise remedy plan, SBC has made clear that it will not agree to abide by whatever remedy plan the Commission deems to be consistent with Section 271 of TA96. In other words, SBC will not agree to be bound by a remedy plan unless it happens to be the remedy plan that SBC endorses. If SBC's theory on the voluntary nature of its remedy plan is correct, which WorldCom submits it is not, then the Commission should question why its Staff and parties are being required to dedicate scarce resources to discuss what remedy plan is appropriate if SBC will not commit to be bound by that plan. In short, SBC Illinois apparently views any determinations that the Commission may render on the remedy plan as "suggestions" that SBC may or may not decide to implement. The Commission disabuse SBC Illinois of that notion.

To this end, the Commission should condition its endorsement of SBC Illinois' 271 application on SBC Illinois' withdrawal of its appeals of the 01-0120 plan. Such a move is not unprecedented. To ensure that Verizon would not replace a state-ordered, self-effectuating remedy plan decisions with a "voluntary" plan with remedies that merely amount to a cost of doing business after 271 approval, the Pennsylvania Public Utility Commission did, as WorldCom proposes here, condition its 271 approval on several conditions, including Verizon's withdrawal of legal challenges to the PUC's authority to impose such a remedy plan:

In our judgment, Verizon needs to take further action in the following critical areas in order to demonstrate to the Commission's satisfaction that the local exchange and exchange access markets in Pennsylvania are fully and irreversibly open to competition in accordance with the requirements of Section 271(c)(2)(B). We find that the Pennsylvania markets will not be fully open to competition absent the following:

Performance Assurance Plan: A permanent Performance Assurance Plan ("PAP"), together with self-executing remedies, appropriate penalty levels, performance standards, and other features, is essential to properly incent Verizon to provide and to continue to provide adequate and non-discriminatory service to CLECs after Section 271 approval is achieved. Moreover, absent withdrawal of Verizon's pending appeal challenging the Commission's legal authority to impose remedies, no PAP can be considered adequate and permanent so as to prevent backsliding. Therefore, to implement a PAP that is adequate for Section 271 purposes, Verizon must agree to augment the current PAP as follows:

(1) withdraw the current appeal regarding alleged lack of statutory authority to impose remedies;

(2) effective for performance beginning July 1, 2001, the Tier II remedies payments for metrics that are missed beyond ninety (90) days shall be set at the amount of $25,000 and shall be self-executing and applicable to all metrics; and,

(3) in the further proceeding called for in ordering paragraph 16 of our *Functional/Structural Separations Order,* there will be a rebuttable presumption that the features of the NY remedies plan should be made applicable and tailored to Pennsylvania. In the interim, the present Pennsylvania metrics and PAP will continue to apply.[41]

WorldCom witness Karen Kinard stated her belief that all ILECs like SBC Illinois would only agree to a plan that has penalties they could tolerate as a cost of doing business.[42] Such remedies would not be sufficient to outweigh the competitive benefits to the ILEC of letting

[41] *See* Pennsylvania Public Utility Commission's June 6, 2001, consultative letter in Docket No. M-00001435 from its Secretary James J. McNulty to Verizon Vice President and Counsel Julie A. Conover. See pages 3-4. Verizon sent a letter on June 7, 2001, agreeing to withdraw the appeal.

[42] Kinard Dir. Aff., WorldCom Ex. 7.0, ¶ 13.

inferior service quality for the CLEC continue, nor would such self-designed enforcement make the cost of actually investing the capital and human resources to fix the problem the best economic choice for the ILEC. Without regulatory requirements, an ILEC would not, and SBC Illinois has not here in this proceeding, proposed a strong enough self-executing enforcement plan to ensure that it treats its wholesale customers in a non-discriminatory manner. Enforcement mechanisms are rarely stiff enough if designed by those most likely to be subject to them. As WorldCom witness Ms. Kinard aptly noted, "children sent to find switches for their own spankings will come back with twigs."[43]

The FCC also has indicated that it is a state's continuing oversight and finetuning of wholesale performance assurance plans that cinch the deal for 271 approvals rather than a specific type of plan being submitted. In approving BellSouth Corp.'s 271 applications for Florida and Tennessee, the FCC said:

> In addition, we note that both the Florida Commission and the Tennessee Authority have the ability to modify BellSouth's SEEMs [Self-Effectuating Enforcement Mechanisms]. We anticipate that the parties will continue to build on their own work and the work of other states to ensure that such measures and remedies to accurately reflect actual commercial performance in the local marketplace.[44]

Many of the FCC's 271 approvals emphasize the same theme of active state and open CLEC involvement in designing an effective remedy plan, and an expectation that the state regulators would continue to monitor the plans of differing "strengths and weaknesses" that have accompanied 271 applications.

---

[43] *Id.*

[44] *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Authorization To Provide In-Region, InterLATA Services in Florida and Tennessee*, WC Docket No. 02 – 307, issued December 19, 2002, Page 92, ¶ 170.

> Like the New York Commission, whose section 271 verification we also accorded substantial weight, the Texas Commission directed a lengthy, rigorous and open collaborative process with active participation by Commission staff and competitive LECs. The Texas Commission also developed a comprehensive performance measurement and remedy plan, which it continues to monitor and refine.[45]

In the course of several six-month reviews, the Texas PUC has taken action not only to modify the metrics used to monitor SBC-Southwestern Bell's performance since 271 approval but also to strengthen the remedy plan.

Clearly, despite SBC Illinois performance measurements witness James Ehr's claims that the ICC could step in and take action (*See* Ehr transcript discussion of procedural cap, Tr., page 3574.) if it found the so-called compromise plan inadequate and in need of fine-tuning, the Commission could only make changes to the plan with SBC Illinois' approval. Otherwise, the ICC would face the same legal challenge of its authority to impose wholesale remedies as SBC Illinois already is pursuing to thwart the 01-0120 plan's most effective elements.

WorldCom agrees with the Pennsylvania PUC that absent withdrawal of pending court challenges of the state commission's legal authority to impose remedies, "no PAP can be considered adequate and permanent so as to prevent backsliding."

In addition, as Ms. Kinard observed, SBC witness Mr. Ehr's response to WorldCom's data request on the Illinois Commission's requirements of remedies to ensure that SBC Illinois serves its own retail customers adequately. The responses indicated that SBC Illinois was ordered to pay a $30 million remedy (as credit to customers) as incentive to improve on poor

---

[45] *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company,And Southwestern Bell Communications Services, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Order, CC Docket No. 00-65, issued June 30, 2000, at paragraph 11.

year 2000 performance in one metric area--customers who were out of service (OOS) > 24 hours. On harms done to CLECs in multiple metric areas (SBC Illinois did not provide the number of metrics missed as requested), SBC Illinois says it paid only $12.5 million in remedies for January to November 2002. (WorldCom is concerned that although the question sought a projection of the "compromise" plan that SBC Illinois instead used remedies actually paid under the original merger plan and existing plans in use.) The Illinois Commission clearly realizes that it takes a large remedy (and SBC Illinois unlikely voluntarily agreed to the level) to motivate SBC Illinois to fix one retail problem area.

Arguably larger amounts are needed to motivate SBC Illinois to fix multiple problem areas causing inefficiencies that burden and discrimination that hinder CLECs trying to compete in the local market. In fact, one might suggest that the remedies to motivate SBC Illinois to treat its competitors fairly may need to have even more of a bite than those focused on improving treatment of its own customers so they do not move to competitors services. The 01-0120 plan of all the SBC Illinois remedy plan options, including the untried "compromise" plan, is the only one that appears to have adequate remedies to motivate performance improvements.

Notwithstanding SBC's legal challenges to the Commission's authority to require SBC to abide by a particular remedy plan, the Commission need not worry about its authority to do so if it requires SBC to commit to abide by the 01-0120 remedy plan as a pre-condition to the ICC providing a positive recommendation to the FCC with respect to SBC Illinois' 271 application. The ICC can take the approach the Colorado Public Utilities Commission did in its 271 proceeding, which was conducted by a Special Master, an expert independent economist, hired by the PUC to develop a remedy plan for the 271 proceeding. The Special Master determined, and the Colorado PUC agreed that:

> This Order is not compulsory, but rather hortatory. If Qwest implements the CPAP [Colorado PAP] by adopting the attached recommended SGAT [Statement of Generally Accepted Terms] language -- and assuming all other conditions have been met -- I will recommend to this Commission that it recommend to the FCC that Qwest's entry into the long distance market is consistent with the public interest requirement of 42 U.S.C. § 271(d)(2)(B). On the other hand, if Qwest declines to adopt this version of the CPAP, I will advise this Commission to withhold a recommendation of § 271 compliance.[46]

No reasonable claim can be made that the "compromise" plan advocated by SBC Illinois in this proceeding did not stem from the rigorous kind of proceeding, including active CLEC and Commission staff input, praised by the FCC in its past 271 orders. It is clear from SBC witness Mr. Ehr's answers to CLEC questions in workshops during this proceeding that the compromise agreement was negotiated on the side with only either one or two CLECs -- TDS Metrocom and Time Warner Telecom. Tellingly, neither of these CLECs have signed onto the plan they negotiated in Illinois, both opting for the 01-0120 plan, since SBC Illinois was not successful in getting it stayed pending the outcome of its legal challenge. Those CLECs have filed the plan in interconnection agreement amendments in other states, where SBC Illinois has either prevailed in attacking a state commission ordered plan through legal challenges (Wisconsin) or where SBC Illinois is currently seeking a stay of and challenging state commission ordered remedy plans (Indiana). None of these states have approved SBC Illinois' compromise plan for Section 271 purposes.

---

[46] *In the Matter of the Investigation into Alternative Approaches for a Qwest Corporation Performance Assurance Plan in Colorado*, Colorado PUC Order, Decision No. R01-997-I in Docket No. 01I-041T,

In an order approving TDS's interconnection agreement amendment, the Wisconsin PSC said:

> The Commission construes the Agreement between AW [Ameritech Wisconsin] and TDS Metrocom as based solely on the needs and interests of these parties. Any other CLEC may negotiate with Ameritech for a different or better remedy plan, subject to § 252 arbitration in the event of impasse. This Commission order does not constitute a Commission adoption of any substantive term or provision of the Agreement as a policy of the Commission applicable generally to other telecommunications providers or specifically to providers seeking interconnection with AW.
>
> Furthermore, nothing herein should be construed to mean that the Commission finds the Agreement sufficient for 47 U.S.C. § 271 approval purposes. That decision will be made by the Commission in docket 6720-TI-170 at the appropriate time. Moreover, approval of the Agreement does not in any way waive the Commission's right to pursue appeals of court decisions on the remedy plan ordered in docket 6720-TI-160, or to order a different statewide remedy plan. Should the Commission prevail in court or order a different statewide remedy plan, approval of the Agreement does not preclude TDS Metrocom from exercising the change in law provisions of its interconnection agreement to pursue presumably better terms and conditions. [47]

The Indiana Regulatory Utility Commission expressed even stronger objections to the plan's intended role beyond its inclusion in Time Warner's interconnection agreement with SBC:

> **Discussion and Findings.** Although we find that the proposed Amendment should be approved, as detailed below, there are some concerns to be addressed regarding the issues raised by the commenting CLECs. At the time of the CLEC filing in this Cause, Ameritech Indiana's petition for reconsideration and motion for a stay were pending. Ameritech did request the Commission to vacate the remedy plan order and chose either the Texas plan, which had already been rejected by this Commission, or the Time Warner/Ameritech proposed amendment. The Commission declined Ameritech's offers. It appears that Ameritech was attempting to persuade this Commission to impose a privately negotiated

issued September 26, 2001, Paragraph 13, Page 14. Qwest agreed to file a SGAT including the remedy plan language developed by the Special Master and ordered by the PUC.

[47] Docket 05-TI-712 Wisconsin PSC order issued January 6, 2003, regarding the Application for Approval of the First Amendment to the Interconnection Agreement Between TDS Metrocom, LLC, and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), at page 2.

> amendment on all CLECs. Notwithstanding Ameritech's assurances to the contrary, we are concerned that Ameritech may seek to impose the terms of this Time Warner amendment on its competitors in subsequent proceedings. However, we emphasize our statement in the December 19, 2002, Order on Stay and Reconsideration in Cause No. 41657 that Section 252(i) and 47 CFR 53.809 do not compel a CLEC to adopt pre-existing agreements.[48]
>
> Therefore, we specifically find that approval of the proposed Amendment in this Cause should have no precedential effect in Cause No. 41657. That is, Ameritech Indiana cannot take the position that our approval of this Amendment is acquiescence that a remedy plan is in place in Indiana for purposes of meeting its Section 271 obligations. In fact, we specifically find that the remedy plan as agreed to by Time Warner is inadequate to meet our guidelines or address our concerns set forth in that Cause.[49]

The Illinois Commission should not throw away its hard work on a sufficient remedy plan for this meager substitution. The process and the outcome both embody the state regulatory oversight and CLEC involvement in developing and monitoring such plans that the FCC has endorsed in approving the wide variety of 271 remedy plans that have been filed thus far. The ICC should join Indiana and Wisconsin in seeing through the sham nature of this plan. The 01-0120 plan gave SBC Illinois and CLECs a fair hearing. Neither side received all they desired. It is truly a well considered remedy plan, not this side deal that SBC Illinois proposes that two small CLECs, tired of waiting for SBC Illinois' litigation delaying tactics to end in the three states that have improved on the original Texas plan, negotiated but have not even elected for their remedy plan in Illinois.

[48] Cause No. 41657, Order on Stay and Reconsideration, issued December 19, 2002, paragraph 4 at p. 8.

3. The Docket 01-0120 Order Is Consistent With FCC Requirements.

The ICC's 01-0120 plan decidedly embodies more of the FCC's five requirements of an effective remedy plan than does the plan SBC Illinois is promoting here. The five characteristics of an adequate remedy plan as specified by the FCC, are:

- Potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
- Clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
- A reasonable structure that is designed to detect and sanction poor performance when it occurs;
- A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and,
- Reasonable assurances that the reported data are accurate.[50]

The 01-0120 plan better targets remedies to the problem areas, without burdening the CLEC with escalations and dispute resolution filings to gain remedies and eventual correction of CLEC specific, metric specific performance disparities virtually ignored by SBC Illinois'substitute plan's indexing methods.

The third bullet point of the FCC's requirements is the weakest link for the SBC Illinois substitute plan. It does not detect and sanction poor performance when it occurs. It only raises remedies based on statewide, aggregated results for all performance measures for which there was activity, rather than on a CLEC-by-CLEC basis, where the magnitude by which SBC Illinois

---

[49] Cause No. 40572-INB162: Indiana Regulatory Utility Commission order, page 3, issued January 17, 2003, in Submission of Indiana Bell Telephone Company, Inc. d/b/a Ameritech Indiana for commission recognition of an amendment to an interconnection agreement arrived at through voluntary negotiations with Time Warner Telecom of Indiana.

[50] *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket 99-295, issued December 22, 1999, at ¶ 443, 446 ("New York Order").

fails to comply with any particular performance measure is taken into account when determining remedy payments. The Commission-ordered 01-0120 remedy plan, however, does account for the harm to the individual CLEC and the magnitude of SBC Illinois' failure in terms of higher remedies for each occurrence of activity affected by the inferior process.

Remedies under the SBC Illinois substitute plan do not increase with the magnitude of the performance miss, but only with the percentage of metrics missed. By focusing on the percentage of CLEC aggregate misses, the plan can result in remedy payments that do not address the impact of poorer service to the individual CLEC. The result is that SBC Illinois can meet its aggregate performance standards (or at worst, pay penalties only at the lowest tier amounts), while simultaneously failing measures critical to a particular CLECs' business needs so miserably that the CLECs' business is irreparably harmed.

To illustrate the problem of using aggregate CLEC results to calculate the level of remedies to be paid, assume hypothetically that there are 250 performance measures at issue. Assume further that due to the specific focus of an individual CLEC's business, only 50 of these 250 measures are relevant to the particular CLEC. Under the SBC Illinois substitue plan, SBC Illinois could selectively fail these 50 measures and still only pay the CLEC the lowest level of remedies because the payment is based on overall, statewide, aggregate results. In other words, SBC Illinois could selectively disadvantage individual competitors by failing the measures most key to those competitors' business, and still make minimal payments under the statewide, aggregated measurement of its performance. Conversely, under the remedy plan endorsed by the Commission, SBC Illinois' ability to meet or exceed the parity or benchmark of each performance measure is taken into account and countered with an attention-getting remedy amount (even for the low ranked measures in the ICC's low, medium and high ranked structure) and erases the potential for discrimination that exists under the SBC Illinois substitute plan. In addition, the remedies increase based on the reliance of CLECs on the process being measured – *i.e.*, when the measure is failed, per occurrence remedies are paid for the volume of activity affected.

It is not difficult to understand why the SBC Illinois substitute plan is inherently discriminatory. The plan, in essence, provides an avenue by which to target poor performance to achieve a goal of obtaining maximum competitive advantage coupled with minimal financial repercussions. With little effort, SBC Illinois could focus its worst performance on a few measures crucial to a particular CLEC's ability to function (*e.g.*, those relating to UNE-P provisioning), thereby stifling competition, and still wind up making minimal Tier 1 or Tier 2 payments.

Even aside from the real possibility of such calculated conduct, should SBC Illinois' unintentional performance failures fall under only a few measures, but the failure be extremely severe within those impacted measures, competitors who are tremendously reliant upon successful performance in measured areas will be disproportionately impacted by SBC Illinois' performance lapses, with little recourse and with little or no repercussion for SBC Illinois. The Commission's plan, while it did not focus on the magnitude of the performance gap, did capture the impact of an inferior process by focusing much higher per occurrence and per measure remedies on the volume of CLEC activity harmed by that process.

The SBC Illinois substitute plan thus fails the nondiscrimination standard set forth in 47 U.S.C. § 252(e)(2)(A)(i), and the Commission should therefore reject the SBC Illinois proposal as an adequate anti-backsliding enforcement plan for 271 purposes.

When asked about these weaknesses at the Commission's workshop on February 13, 2003, SBC witness Mr. Ehr only could point to parts of the plan that clearly fail the FCC's fourth bullet point that the anti-backsliding plan must be: "A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal."

The plans provisions for a CLEC to pursue additional remedies when 20% or more of its metric activity areas are missed three months in a row is (1) too late a resolution to begin with and (2) likely to mire the CLEC in months of burdensome complaint and dispute resolution efforts. (*See* Remedy Plan 7.5; *see* also Tr., pages 3682-3688, 3691-3693). Another provision for pursuing a root cause analysis to address a failed parity or benchmark situation recurring three months in a row also would provide no enforcement of SBC Illinois' timelines for analysis let alone resolution of the problem without months of open ended escalation among higher ranking executives until the CLEC gives up or starts litigating the issue at the Commission. As WorldCom witness Ms. Kinard noted "[t]his clearly is the least self-executing remedy plan, I have ever seen submitted in 252 and 271 performance measure proceedings."[51]

The first and fifth bullets of the FCC's criteria also are not fully met by the SBC Illinois substitute plan. It lowers the monthly caps proposed by the 01-0120 order and it sets an additional payment limit at the CLEC's charges due SBC Illinois in the month of performance (Section 7.6). The plan does not take into account that the CLEC can be harmed by loss of continuing monthly revenue from the customer lost through poor SBC Illinois service, nor does it cover damages to the customer's business or reputation if the CLEC is sued for the consequences of this SBC-caused poor service. Although most remedies cover performance issues that increase CLEC costs and resource requirements to begin taking customer orders in the

[51] Kinard Dir. Aff., WorldCom Ex. 7.0, ¶ 35.

first place or to work around the SBC Illinois caused inefficiencies so it will not impact the customer, some provisioning or maintenance performance problems can cause harm beyond the monthly cost of what the CLEC paid for the service to both the CLEC and the customer. SBC Illinois would probably gladly provide free bad service to the CLEC to drive away future business from that customer and others learning by word of mouth of that customer's experience in converting to a CLEC.

Further, the integrity of the performance data, already highly suspect due to the findings of the BearingPoint and Ernst and Young audits requiring an outrageous number of restatements, is not likely to be adequately reviewed in the future. The SBC Illinois proffered substitute plan largely diminishes CLEC involvement in designing the audit plan. The only control at all on the audit in SBC Illinois' proposal is that it allows the commission to reject auditors SBC Illinois proposes.

In addition, Section 8.11 of the substitute plan would enable SBC Illinois to decide unilaterally to off-set performance remedies due CLECs if the CLEC owes SBC Illinois any undisputed monies. While this might sound reasonable on its face, the New York and Florida Public Service Commissions have rejected similar proposals because of the complications of interpreting what's disputed in the CLEC's and ILEC's view in terms of billing issues and the intricacies of bankruptcy laws as to what is owed and what is deemed by the courts to be off-settable between the bankrupt company and vendors.

In its recent order amending the New York Performance Assurance Plan, the PSC rejected Verizon's proposal for allowing such withholding of performance remedies. The New York PSC struck the proposed language on this issue, save for mentioning that Verizon could pursue commercial dispute resolution processes available to receive any monies due it. The New York PSC opined: "Judging from the comments received, it appears that issues relating to billing dispute provisions found in interconnection agreements and tariffs, together with bankruptcy rules, could introduce an unnecessary level of complexity to the PAP [Performance Assurance Plan] that could draw the Commission into ordinary commercial disputes."[52]

The Florida Public Service Commission took an even stronger stance in a recent ruling on a CLEC's objections to BellSouth's actions withholding performance remedy payments to offset other monies owed it by the CLEC:

> Allowing BellSouth to offset would defeat the s e l f -effectuating nature of the Plan. The self-effectuating provision of the Plan [Order No. PSC-02-1082-FOF-TP Docket No. 000121A-TP] was established to provide timely incentives to correct non-compliant behavior. Allowing BellSouth to offset the amount of penalties owed or to hold amount in escrow, would diminish the effectiveness of the penalty. Moreover, a determination of the appropriate amount to offset would have to be made. .[53]

This off-setting provision clearly is another way that the SBC Illinois' substitute plan adds burdens on the CLEC in trying to prove that the monies it owes SBC Illinois are truly in dispute and further diminishes the self-executing nature of the remedy plan.

---

[52] *Petition Filed by Bell Atlantic-New York for Approval of a Performance Assurance Plan and Change Control Assurance Plan*, Case 99-C-0949, filed in C 97-C-0271, issued January 22, 2003, Page 7.

[53] *See* Florida Public Service Commission's order denying an Expedited Petition for Temporary Relief filed by BellSouth Telecommunications, Inc. ("BellSouth"), requesting that BellSouth be relieved of the requirement to make payments under its Performance Assessment Plan to Supra Telecommunications and Information Systems, Inc. ("Supra") until Supra made full and complete restitution to BellSouth and remained current in its bill payments for at least six months. *See Docket No. 000121A-TP, In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies (BELLSOUTH TRACK), Order Denying Motion to Dismiss and Expedited Petition for Temporary Relief*, Order No. PSC-02-1082-FOF-TPI, issued August 8, 2002, pages 9-10. WorldCom has provided a copy of this order as Attachment A.

For all of the forgoing reasons, the 01-0120 plan adopted by the Illinois Commerce Commission is the plan that the Commission should endorse for Section 271 purposes. SBC acknowledges that its wholesale performance has improved since the 01-0120 plan was implemented. The plan appears to be working and no compelling reason has been offered as to why the plan should be changed. In addition, the Commission should condition its endorsement of SBC Illinois' federal 271 application on SBC Illinois' withdrawal of its appeals of the 01-0120 plan.

I. Oustanding Disputes From Six Month Review

As WorldCom's witness Kinard stated in her comment and rebuttal affidavits, remedies are required for metrics MI 12 and MI 13.1 to motivate improvement in two problem areas. MI 12 motivates parity in clearing orders that error out of billing. CLECs need these billing and the customer service records associated with them updated regardless of what the billing cycle is so they own the customer right away and can provide answers about service and log in trouble reports promptly. The billing completeness measurement, PM 17 does not serve the same purpose. It only enforces to the degree that matters have not gotten so bad that the charges do not show up on the next carrier bill to make auditing easier for CLECs. While SBC Illinois has a disaggregation for customer as well as CABS bills, the customer segment does not ensure the billing errors are captured quickly enough to ensure timely update of the customers underlying carrier and confusion and errors can occur in serving that customers service question and maintenance needs without such timely updates..

Yes, if delays on closing to billing are really bad for orders placed at the end of the billing cycle the PM 17 metric will be missed. But even excellent performance on this metric does not address the behavior that MI 12 is trying to motivate. SBC Illinois affirming that all orders, including late ones are included, is not relevant to the behavior each metric is designed to motivate. One metric can be missed and not the other not. If SBC clears or errors as quickly as it clears its own, then MI 12 is not missed even if PM 17 is missed. These facts clearly show that two different behaviors are being measured and SBC has control over whether it misses none, one, or both of metrics PM 17 and PM 12 Covering both metrics with remedies will ensure that both are met as the CLEC requires.

Further, remedies should also be applied at the low level to 13.1 Mechanized Line Loss Report Average Delay Days, when they exceed 4 days on average. The Michigan Public Service Commission's order quoted in Ms. Kinard's rebuttal affidavit did not make CLECs agree to remove remedies from MI 13 in granting WorldCom's petition there.

> The Commission concludes that WorldCom's proposal should be adopted. Although both PM MI 13 and PM MI 13.1 relate to line loss notifiers, they do not measure the same thing. WorldCom proposes that remedies be imposed for PM MI 13.1 when the average delay is more than four days, which PM MI 13 measures the percentage of notifications returned within one business day. *Because line loss notification is so important to the development of a competitive market (due to the effect on customer relations) and because line loss notification has been a continuing problem, the Commission concludes that it is appropriate to impose remedies for both PM MI 13 and PM MI 13.1.*[54]

This Commission should join the Michigan Commission in making PM MI 13.1 a remedied measure. Moving the medium remedies proposed by staff, and agreed to by SBC Illinois, from MI 13 to MI 13.1 would not capture the whole picture of delays in receiving line loss reports. No more than 3 percent should be late at all, and those that are late should not be so late that they

[54] *See* MPSC Order at 4 (emphasis added).

are beyond a 4 day average, making it more likely that the CLEC will bill a departed customer ensuring that the customer will never return. WorldCom has originally proposed high remedies for both metrics but moved to accepting low remedies on MI 13 and seeking low remedies for MI 13.1 in the collaboratives. At that time, SBC Illinois' line loss performance had improved, but now that it is declining again as WorldCom witness Litchtenberg and other CLEC witnesses have noted, higher remedies should be imposed on MI 13 along with the need for at least low levels for MI 13.1.

III. CONCLUSION

The record compiled during Phase 2 of this proceeding demonstrates that SBC Illinois' performance reporting is incontrovertibly deficient. Both BearingPoint and Ernst & Young concluded as much. Indeed, without dependable performance reporting, there is no basis to conclude that SBC provides nondiscriminatory access to its OSS today, much less that there is sufficient assurance that SBC Illinois will provide nondiscriminatory access to OSS in the future.

The OSS problems that WorldCom recounted in Phase 2 of this proceeding demonstrate that SBC Illinois does not provide nondiscriminatory access to its OSS and that WorldCom is ability to compete in the local market in Illinois is substantially impeded as a result. SBC Illinois has acknowledged its continuing problems with wholesale billing and line loss notices, but promises that it is working on those problems and things will get better. However, as the FCC has held, paper promises of future performance, have no probative value as to present compliance with section 271.

For these reasons, SBC Illinois cannot be found to be in compliance with the nondiscriminatory access requirement to UNEs that is reflected in checklist item number 2. Accordingly, WorldCom urges the Commission to withhold any positive recommendation on

SBC Illinois' section 271 application unless and until (1) SBC fully and conclusively resolves the OSS problems that WorldCom has identified, and (2) proves through BearingPoint's third party test of its OSS that its performance measures are reported accurately, that controls over the development and calculation of those measures are adequate, and that the data it provides is reliable.

Moreover, SBC Illinois' has proposed a watered-down remedy plan that fails by any reasonable measure to provide a self-effectuating performance assurance plan that will ensure SBC continues to comply with the checklist and provide a minimally acceptable level of wholesale service once it is granted section 271 authority in Illinois. After a lengthy proceeding in which SBC, CLECs, and Commission Staff had a full and fair opportunity to make their case, the Illinois Commission adopted what it believes is an appropriate remedy plan in Docket 01-0120. SBC has offered nothing in Phase 2 of this proceeding which would warrant the Commission adopting a different remedy plan here. WorldCom therefore urges the Commission to require as a precondition to a positive section 271 recommendation that SBC continue to make the Docket 01-0120 plan available and drop all appeals of that plan. In addition, WorldCom concurs with Staff's recommendation that the 01-0120 plan should be made a part of SBC Illinois Alternative Regulation Plan.

Finally, WorldCom urges the Commission to resolve two disputes concerning performance measures that WorldCom, AT&T and SBC could not reach agreement on in the latest six month review of SBC Illinois performance assurance plan.

WHEREFORE, WorldCom respectfully requests that the Commission enter an order in Phase 2 of this proceeding consistent with the recommendations contained in the affidavits of WorldCom witness Sherry Lichtenberg and Karen Kinard and this brief.

Respectfully submitted,

WorldCom, Inc.

Dated: March 25, 2003

By: Darrell S. Townsley /DLK

Darrell S. Townsley
WorldCom, Inc.
205 North Michigan Avenue
Suite 1100
Chicago, Illinois 60601
Telephone: (312) 260-3533
Facsimile: (312) 470-5571
e-mail: darrell.townsley@wcom.com

One of Its Attorneys